

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LARRY M. WILMER,	§
	§
Defendant Below-	§ No. 177, 2009
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0710005462
Plaintiff Below-	§
Appellee.	§

Submitted: August 26, 2009

Decided: September 25, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 25th day of September 2009, upon consideration of the appellant's Supreme Court Rule 26(c) brief, his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) The Superior Court adjudicated the defendant-appellant, Larry Wilmer (Wilmer), guilty of violating the terms of a previously-imposed probationary sentence. The Superior Court sentenced Wilmer to five years at Level V incarceration to followed by six months at Level II probation. This is Wilmer's appeal from that sentence.

(2) Wilmer's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Wilmer's counsel asserts that, based upon

a complete and careful examination of the record, there are no arguably appealable issues. By letter, Wilmer's attorney informed him of the provisions of Rule 26(c) and provided Wilmer with a copy of the motion to withdraw and the accompanying brief. Wilmer also was informed of his right to supplement his attorney's presentation. Wilmer has not raised any issues for this Court's consideration. The State has responded to the position taken by Wilmer's counsel and has moved to affirm the Superior Court's judgment.

(3) The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (b) this Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.*

(4) This Court has reviewed the record carefully and has concluded that Wilmer's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Wilmer's counsel has made a

* *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

conscientious effort to examine the record and the law and has properly determined that Wilmer could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Randy J. Holland
Justice